



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

PATRICIA McLAUGHLIN

Petitioner

v.

LOCAL 2715, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES:  
(AFSCME)

and

HILLSBOROUGH COUNTY COMMISSIONERS

Respondent

CASE NO. M-0602

DECISION NO. 88-70

#### APPEARANCES

##### Representing Patricia McLaughlin:

Andru Volinsky, Esq., Counsel  
Patricia McLaughlin

##### Representing Local 2715, AFSCME:

James J. Barry, Jr., Esq., Counsel  
James C. Anderson, Staff Representative

##### Representing Hillsborough County Commissioners:

David Horan, Esq., Counsel

##### Also appearing:

Emily Mercier, HCNH  
James Gray, HCNH

#### BACKGROUND

On June 20, 1988 Counsel for Patricia McLaughlin filed unfair labor practice charges against Hillsborough County (County) alleging wrongful discharge and a breach of the collective bargaining agreement and against Local 2715, AFSCME (Union) for breaching its duty of fair representation, seeking as remedy an Order to the County to enter into binding arbitration with respect to the propriety of the termination and to the Union to allow the arbitration of the Petitioner's termination with the complaint's right to retain counsel of her choice for representation in arbitration.

Hearing in this matter was held in PELRB's office on July 14, 1988, at which time Counsels for all parties outlined their positions. Attorney Horan for the County and Attorney Barry for the Union objected to the introduction of certain union contracts and prior arbitration awards. Attorney Volinsky for the complainant discussed rules of evidence and their application to PELRB in addition to cases in which terminations were held arbitrable under certain contracts.

The Chair ruled that the Board's policy was to be pretty broad in acceptance of certain documents and contracts and it would rule upon them individually as presented.

#### FINDINGS OF FACT

1. Issues are: (a) Is termination an arbitrable issue in this case; (b) Did the petitioner waive her right to arbitration; (c) Was her termination an unfair labor practice; and, (d) Did the union fail to process her grievance and rephrase the complaint.
2. Petitioner graduated from Moore General Hospital as an LPN in 1958; worked 13 years as a licensed LPN in Connecticut; began her employment at the Hillsborough County Nursing Home in 1974 and was employed by the County until termination. From the time of her employment, she has never elected to join the union. Under direct testimony, she alleged that she had never seen a copy of the contract, therefore was not aware of the grievance procedure or deadlines for filing of grievances. She also alleged that she never saw the contract but felt it applied to union members only; that she never had any discussion with anyone about the union contract; and never consulted the union steward. Although she received all pay raises in accordance with all contracts, worked side-by-side with union members, knew that James Gray was the President of the Union, she never consulted him, her immediate supervisor or administrator regarding rates of pay or upcoming raises.
3. McLaughlin's employment was terminated by letter on April 11, 1988. The letter of termination informed her of right to appeal under N.H. statute, RSA 28.10 (a).
4. She made several unsuccessful attempts to retain the County attorney and the Union Counsel to represent her, seeking to go to arbitration for a fair hearing.
5. She requested a public hearing before the County Personnel Committee under RSA 28:10 (a).

6. Petitioner was previously suspended in 1985 for 10 days and never sought union assistance even when advised by the Director that such representation was available, responding she did not want it.
7. Testimony from the Union President, evidenced that all notices regarding pay raises, delays due to final ratifications, union meeting, etc... were always posted on the employees bulletin board and available to all employees. After ratification of any agreement, copies are distributed to union members and supervisors and generally posted on bulletin boards as are the results of cases going to arbitration.
8. The Petitioner did have a choice of availing herself of the grievance process under the collective bargaining agreement or asking for a hearing under RSA 28:10 (a).
9. The Union has in one instance represented a non-member in the grievance procedure and has not refused assistance when requested.
10. All new hires are advised that the facility employees are unionized but that in accordance with the state law and the contract no one is obligated to join the union to work at the facility.

Petitioner's Requests for Findings:

#1 thru 11 Granted.

#12-13-14 Denied.

#15 Granted.

#16 Denied as to her recognition of her right to grieve under the agreement.

#17 Denied. There were no changes in the condition or in the relationship of the parties. Petitioner had been advised in 1985 that she might or could seek union assistance but refused.

#18-19 Granted.

#20 Denied. Petitioner informed in prior incident.

#21 Denied. Petitioner chose RSA 28:10 (a).

DECISION AND ORDER

Having considered all the testimony and evidence presented, the Board  
ORDERS: -

- (1) The Petitioner to proceed to the County's Personnel Committee as originally requested.
- (2) The charges of unfair labor practice against Local 2715 of the American Federation of State, County and Municipal Employees, AFL-CIO and against the Hillsborough County Commissioners, are HEREBY DISMISSED.

Signed this 17th day of October, 1988.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Also present members Seymour Osman and Daniel Toomey present and voting. Also present, Executive Director, Evelyn C. LeBrun.